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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,754	11/03/2005	Andries Siemensma	0290-182PUS1	2321
2292 7590 11/12/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
MEHTA, HONG T				
ART UNIT		PAPER NUMBER		
4152				
NOTIFICATION DATE		DELIVERY MODE		
11/12/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

# Office Action Summary

**Application No.**

10/527,754

**Applicant(s)**

SIEMENSA ET AL.

**Examiner**

HONG MEHTA

**Art Unit**

4152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on November 3, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date March 14, 2005

### **DETAILED ACTION**

The office action is in response to pending claims 20-38 filed on November 3, 2005. Claims 1-19 are cancelled.

#### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Claim Rejections - 35 USC § 102***

2. **The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagelid (EP 425423 A).**
4. **Regards to claims 20-22,** Hagelid discloses a composition treating adipositas, a lipid metabolism disorder and weight reduction (Abstract and col. 1, lines 5-10). Hagelid teaches said tablet composition be administrated dosage orally for ingestion (col. 1, lines 36, 44-55). Hagelid discloses a composition of a) 60 parts by weight of soya protein concentrate (col. 3, lines 41-42),

"protein hydrolysate" (col. 2, lines 3-7), b) 25 parts by weight of agglomerated skimmed milk powder (col. 3, line 42-43) "intact protein" and c) 17% of carbohydrate in the soya protein concentration (col. 5, line 7) . Hagelid teaches the concentration of the protein is exceeds the concentration (w/w) to that of carbohydrate concentration (col. 5, lines 6-8).

5. **Regards to claims 23 and 24**, Hagelid teaches a composition diet of protein with a weight ratio more of 1:3 and 1:1 in composition (col. 3 lines 41-50 and col. 5, lines 6-8).
6. **Regards to claim 25**, Hagelid teaches a composition with 0-30% carbohydrate by weight (col. 5, line 7).
7. **Regards to claim 26**, Hagelid teaches composition with 20-80% intact protein (col. 3, lines 42-43).
8. **Claims 20, 27-30, and 32-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wibert et al. (US 5,776,887).**
9. **Regards to claim 20**, Wibert discloses a dietary management by ingesting (col. 6, lines 3-9) a nutritional composition with carbohydrate of 1-95% wt. (col. 2, lines 48-50), and protein components with intact proteins (col. 4, lines 17-19) and protein hydrolyzed (col. 4, lines 29-34) with 1-50% of total calories. The protein concentration exceeds the carbohydrate concentration (col. 10, Example 4).
10. **Regards to claim 27**, Wibert teaches a composition contains between 1 to about 95% rapidly and/or moderately absorbed carbohydrates (col. 2, lines 48-50 and 66-67).

11. **Regards to claim 28**, Wibert teaches rapidly absorbed carbohydrates (col. 2, lines 55, 61 and 64); moderately absorbed carbohydrates (col. 3, lines 8-9 and 12-14) and slowly absorbed carbohydrates (col. 3, lines 19-20 and 44-46).
12. **Regards to claim 29**, Wibert discloses the rapidly absorbed carbohydrates, Novelose Starch to exceeds the combined rapidly and moderately absorbed carbohydrate by at least a factor of 2 (col. 10, Example 4).
13. **Regards to claim 30**, Wibert discloses cookie, snack bar and beverage (col. 5, lines 39-43).
14. **Regards to claim 32**, Wibert discloses a beverage (col. 10, Example 4, line 6) and snack (col. 9, Example 3, line 47) serving with at least 5 to 10 grams of protein hydrolysate and intact protein.
15. **Regards to claim 33**, Wibert discloses vegetable hydrolysate protein to be of soy protein (col. 4, lines 29-33).
16. **Regards to claims 34-35, and 38**, Wibert discloses a drink beverage with intact protein, carbohydrates, artificial sweetener, flavoring and water (col. 10, Example 4). Examiner considers the formulation in addition to a soup formulation.
17. **Regards to 36 and 37**, Wibert discloses a snack with hydrolysed protein, intact protein, carbohydrate, salt, water and dietary fiber (col. 9, Example 2 and 3).
18. Wibert does not disclose the exact proportions as the recited in the instant claims. However, it would have been obvious to one having ordinary skills in the art at the time of the invention to adjust the percentages for the intended application, since it has been held that

discovering an optimum value of a result effective variable involves only routine skill in the art.  
*In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**19. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable unpatentable over Hagelid (EP 425423 A), further in view of (US 6,413,545 B1) Alviar et al.**

20. Hagelid teaches the invention of claim 20 as discussed above.

21. **In regards to claim 31**, Hagelid discloses the daily dose of the nutritional powder administrated at intervals of 3-4 hours (col. 3 lines 55-58 and col. 4, lines 1-4). Hagelid does not teach ingesting the composition between 0.5 and 2 hours prior to the next meal. However, Alviar teaches administering a diet composition from about two hours to 30 minutes before each daily meal (col. 6, lines 53-56).

22. Hagelid and Alviar are analogous art because they are from the problem-solving area of dietary nutrition and metabolism disorders. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teaching of Hagelid to include Alviar because the administration of set time for consumption of nutrients can diminish the sense of hunger for the goal of weight management.

23. The motivation for doing so would have been to manage with nutritional supplement at a given time interval to support weight management by affecting the body's metabolism or reducing appetite (col. 1, lines 30-31).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 5:00 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 571-271-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Joseph S. Del Sole/  
Supervisory Patent Examiner, Art Unit 4152